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## Their Cheese Has Holes but Their Gun Policy Doesn't: a Review of the Swiss Gun Policy Compared to the United States

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# THEIR CHEESE HAS HOLES BUT THEIR GUN POLICY DOESN'T: A REVIEW OF THE SWISS GUN POLICY COMPARED TO THE UNITED STATES.

By: Nikolaos Manuel Hernandez

*"With the right to bear arms come a great responsibility to use caution and common sense on handgun purchases." – Ronald Reagan*

*The left will say we need more gun control, the right will say it is our constitutional right to bear arms. Is one truly better than the other? Does the answer lie simply in gun education? This note will scrutinize the history of the Second Amendment to the United States Constitution as it relates to gun rights, gun laws, and gun violence. Next, this note will compare those rights, laws, and statistics to that of Switzerland. Switzerland's gun policy and laws are extremely liberal due to their mandatory requirement of training young men in the handling of guns. As a result, there is little to no gun violence in Switzerland. This note will compare key differences between the two countries who have two very different styles of government all while attempting to find a middle ground where policy, law, and innovation. However, this note will only address what could happen if the United States decided to adopt the Swiss policy.*

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## A SHORT HISTORY OF THE SECOND AMENDMENT

"A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed."<sup>1</sup> This phrase has caused hundreds of years of debate amongst many Americans. Two different views arise from reading this short, yet powerful sentence. One view establishes that the right to bear arms is an individual right entitled to all citizens of the United States.<sup>2</sup> Flowing from this view is the theory that "[t]he United States Constitution restricts legislative bodies from prohibiting firearm possession, or at the very least, the Amendment endorses prohibitory and restrictive regulation presumptively unconstitutional."<sup>3</sup> This view allocates power to the people to take up arms and defend what is theirs. However, others believe we must look to the intent of the Framers, and that through that lens it was the intent of the Framers to simply prohibit Congress from taking away a state's ability to defend itself. This theory is known as the collective rights theory.<sup>4</sup> Under this theory, "citizens do not have an individual right to possess guns and that local, state, and federal legislative bodies therefore possess the authority to regulate firearms without implicating a constitutional right."<sup>5</sup> This principle allows the federal and state government, instead of the individual, to decide the hotly contested issue of gun rights and policy. With any law will come two competing sides, and while neither view is wrong, it is important to understand the history that preceded these views.

December 15, 1791 forever changed the history of the United States. On this day, ten amendments to the United States Constitution were ratified, and with time became known as the Bill of Rights.<sup>6</sup> America, though, did not immediately roll out gun policy and legislation. It took over 140 years for the United States to create its first gun control legislation—the National Firearms Act

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<sup>1</sup> U.S. CONST. amend. II.

<sup>2</sup> See LEGAL INFORMATION INSTITUTE, *Second Amendment*, [https://www.law.cornell.edu/wex/second\\_amendment](https://www.law.cornell.edu/wex/second_amendment).

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> See Sarah Gray, *Here's a Timeline of the Major Gun Control Laws in America*, (Feb. 22, 2018, 4:04 PM ET), <http://time.com/5169210/us-gun-control-laws-history-timeline/>.

("NFA"). The NFA was passed on June 26, 1934 by President Franklin D. Roosevelt. The NFA placed a \$200.00 tax on the "manufacturing, selling, and transporting of firearms specifically, short-barrel shotguns and rifles, machine guns, firearm

mufflers and silencers."<sup>7</sup> These laws are consistent with the policy we have today. The idea was, and still, is to stop the transfer of the weapons and prevent violence stemming from the use of weapons. The second piece of legislation relating to gun law and policy was the Federal Firearms Act of 1938 ("FFA"). Although repealed by the Gun Control Act in 1968, the FFA was the first law of its kind to "define a group of people, including convicted felons, who could not purchase guns, and mandated that gun sellers keep customer records."<sup>8</sup> This was the first time the United States attempted to enforce a crackdown on gun control by the federal government in order to regulate the ability of convicted felons to purchase firearms.

However, due to constitutional problems with the FFA and in the tragic wake of the brutal assassinations of President John F. Kennedy, Robert Kennedy, and Dr. Martin Luther King, the Gun Control Act ("GCA") was passed in 1968.<sup>9</sup> The GCA of 1968 was much more inclusive and reflects the laws we see today. The GCA of 1968 banned the importation of guns that could not be used for sporting purposes, placed an age restriction of twenty-one on the purchase of any handguns, prohibited felons as well as the mentally ill from obtaining guns, and finally required all gun manufactures or importers to place a serial number on the gun.<sup>10</sup> This was the first shift in regulating the ability to monitor the movement of guns that were coming into the United States as well as leaving. Additionally, the laws that prohibit felons from obtaining these weapons still hold strong today.

In 1993, the United States enacted the Brady Handgun Violence Prevention Act ("BHVPA"). This law was passed after James Brady, then White House press secretary, became permanently disabled during his efforts to assassinate President Ronald Regan.<sup>11</sup> The BHVPA was the first law, which "required that background checks be completed before a gun is purchased

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<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

from a licensed dealer, manufacturer or importer.”<sup>12</sup> As a result of this law, the United States formed what is still used today for instant background checks. More recently, in 2005, while under the Bush administration, the Protection of Lawful Commerce in Arms Act (“PLCA”) was signed into law. The PLCA was a shield for gun manufactures from being sued by the victims of violent gun crimes. This was the first law of its kind to give any protection to the manufacturer of guns.

As seen from this brief overview, the United States is extremely young when it comes to gun law and policy. The United States has taken preventative measures such as not allowing felons to purchase guns, shielding manufactures from civil lawsuits from the crime and violence guns can cause. However, the different political stances can be seen in the waiting periods, which differ from state to state regarding the purchase of a firearm. Florida, in 2018, passed a law which forces the purchaser of a firearm to wait three days before obtaining a firearm, excluding law enforcement, servicemembers, or holders of concealed weapon permits.<sup>13</sup> These laws restrict the ability of the people to enforce what would be their constitutional right to bear arms to a certain degree, which is more consistent with the intent of the Framers approach. In sharp contrast, and consistent with the language of the Second Amendment, Alabama legislature has imposed no laws regarding waiting to purchase a firearm.<sup>14</sup> These differences from state to state instead of creating a uniform law, along with lack of education regarding firearm control, general firearm knowledge, and the harm firearms can cause are what make controlling gun violence and policy in the United States difficult.

## GUN VIOLENCE AS IT RELATES TO THE UNITED STATES

Numerous horrific gun related massacres have taken place in the United States—namely, Sandy Hook Elementary, the Las Vegas country concert shooting, Marjory Stoneman Douglas, and the ever so recent Synagogue Massacre in Pittsburg, Pennsylvania. These are the massacres that make headlines, but the real headline is that

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<sup>12</sup> *Id.*

<sup>13</sup> See *Waiting Periods: State by State*, GIFFORDS LAW CENTER TO PREVENT GUN VIOLENCE, (Sept. 16, 2018), <https://lawcenter.giffords.org/gun-laws/state-law/50-state-summaries/waiting-periods-state-by-state/>.

<sup>14</sup> See *id.*

on average 1,200 incidents involving gun violence occurs every week in the United States.<sup>15</sup> The ease at which handguns are bought, sold, and traded is becoming an epidemic in the United States. Everyday families lose loved ones due to gun violence and the lack of gun control. Gun violence is not measured solely on the brutal killings of innocent people, gun violence is measured in terms of suicides, homicides, mass shootings, and even accidents.<sup>16</sup> The United States is currently facing a civil war as it relates to gun violence and gun control. Some view the Second Amendment as a fundamental right to arm themselves and defend what they believe is rightfully theirs. Others believe that there needs to be a serious legislative push to outlaw weapons with specific focus on the military grade semi-automatic machine guns.

Now more than ever, school shootings and community gun violence are at their peak in the United States. Parents should feel safe leaving their children with teachers and faculty to protect them as they obtain an education; however, parents now fear that at any given moment the unthinkable could happen. Additionally, parents do not only worry about their children; gun violence does not discriminate in regards to age, race, or gender it can happen in elementary, middle, high school, and even collegiate level.<sup>17</sup> The Alliance for Excellent Education believes that there is a three-level approach when trying to educate and prevent gun violence.<sup>18</sup> These three layers are student voices, promotion of safety and well-being, and common-sense gun control measures. The Alliance for Excellent Education states that students in times of gun related tragedy should be encouraged to speak out, and that their age should not be a factor in their democratic voice and that those who believe the children affected by gun violence are too young to understand should be silenced and the children should be able to express themselves freely. It is believed that through this approach

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<sup>15</sup> Andrew Van Dam, *The Surprising Way Gun Violence Is Dividing America*, WASH. POST (May 31, 2018), [https://www.washingtonpost.com/news/wonk/wp/2018/05/31/the-surprising-way-gun-violence-is-dividing-america/?noredirect=on&utm\\_term=.36ec73fd208a](https://www.washingtonpost.com/news/wonk/wp/2018/05/31/the-surprising-way-gun-violence-is-dividing-america/?noredirect=on&utm_term=.36ec73fd208a).

<sup>16</sup> *Id.*

<sup>17</sup> *The Alliance for Excellent Education's Statement on Gun Violence in America's School and Communities*, ALL4ED (March 14, 2018, 9:54 am), <https://all4ed.org/the-alliance-for-excellent-educations-statement-on-gun-violence-in-americas-schools-and-communities/>.

<sup>18</sup> *Id.*

the most change will occur. The more people discuss gun policy, control, and the effects of gun violence the more everyone can learn.

Promotion of safety and well-being is the second level of the three-level approach in order to prevent gun violence. Finding that arming teachers is not the answer, the Alliance for Excellent Education promotes the idea that “ensures that schools have requisite personnel, including school counselors, psychologist, psychiatrists, therapists, and other mental health professionals available.”<sup>19</sup> This approach is a reactive, instead of proactive approach, when it comes to the mental health of the students and faculty, and may not provide the greatest preventative measure. However, the third and final level is the common-sense gun control measures. The Alliance for Excellent Education wants to roll out new legislation “banning military-grade weapons, high-capacity ammunition clips which are products that modify semi-automatic weapons into automatic firearms, and expanding background checks that are more rigorous and effective.”<sup>20</sup> This final approach seems to be the most forward looking. It is preventive in nature and allows control to be in the federal and state governments. Semi-automatic machine guns have no place in everyday life and are meant for only the most intensive types of warfare. However, those who read solely into the wording of the Second Amendment and not the intent of the Framers will believe that it is their constitutional right to arm themselves as they please, thus furthering the divide of any progress as it relates to educating Americans on gun violence.

Gun violence and control is most hotly contested between Americans from the ages of eighteen to twenty-nine.<sup>21</sup> In an interesting statistic, one-third of people over the age of fifty were found to own a gun, compared to that of about twenty-eight percent of young Americans.<sup>22</sup> It comes as a surprise to very few that the United States has the highest rate of murder or manslaughter by firearm compared to the rest of the world.<sup>23</sup> With staggering numbers such as forty percent of Americans owning a gun or living in a household with a gun, numbers such as 11,000

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<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> See *American's gun culture in 10 charts*, BBC (October 27, 2018), <https://www.bbc.com/news/world-us-canada-41488081>.

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

deaths involving a firearm in 2016 should come as no surprise.<sup>24</sup> To say that the United States is a leader in gun ownership is an understatement. The United States owns over 390 million guns, which almost doubles the second place Yemen.<sup>25</sup> Even though mass shootings are headlined in the news and social media, statistically, mass shootings are only a small part of the very serious problem. In 2016, of 33,594 firearm related deaths 22,938 were suicides. The American Journal of Public Health found “there was a strong relationship between higher levels of gun ownership in a state and higher firearm suicide rates.”<sup>26</sup> The ease at which guns are bought and sold in this country and the lack of education and proper training is a toxic mix to any owner of a firearm.

However, when looking at solely mass shootings, the United States faces a serious problem as the country has witnessed an increase in mass shootings. In 2012, at Sandy Hook Elementary in Connecticut, the lives of twenty-seven innocent victims were taken. In 2007, the mass shooting at Virginia Tech claimed the lives of thirty-two students. In a nightclub in Orlando, Florida, forty-nine innocent people were brutally killed. In 2018, in Parkland, Florida, Marjory Stoneman Douglas students suffered the loss of seventeen students and faculty members. However, the most brutal and gruesome attack unleashed in the United States was the 2017 Las Vegas, Nevada shooting, claiming the lives of fifty-eight innocent people. During this shooting, a gunman—from the protection of his hotel room—open fired on a crowd of helpless victims.<sup>27</sup>

These mass shootings beg the question, what can the United States at the federal and local levels do to prevent these attacks. Is the answer strict gun laws, or does the answer lie in educating the public from an earlier age about gun safety, gun protection, and gun usage? Recently, there has been a push to ban the “military and assault-style”<sup>28</sup> weapons for the general public. When looking at the Second Amendment it states, “A well-regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.”<sup>29</sup> However, the Framers could not have imagined sub-machine and semi-automatic

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<sup>24</sup> *Id.*

<sup>25</sup> *See generally id.*

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> U.S. CONST. amend. II.



weapons being used to create the type of damage and violence as seen today. Surely, the Framers believed and intended in defending their homes from unwanted intruders, but never could they have imagined this type of warfare happening within the homeland. As with any law, it is the intent and the policy behind the law that must be scrutinized. Poorly created laws enable citizens to act irrationally, and when the cost of an assault rifle is equal to that of a new Apple MacBook,<sup>30</sup> America must realize this is not the form of arming intended by the Framers. The ease with which an American in any state can pass a background check, purchase a firearm, and claim innocent lives has become second nature.

The National Rifle Association (NRA) will continue to argue that a safer country is one that is filled with more guns for citizens to control themselves. The NRA is a top contender for lobbying and contributes millions of dollars to Congress to influence gun policy.<sup>31</sup> However, what the NRA does not do is promote programs to teach young, middle, and older Americans about guns, their history, the safe practice of them, and the harm they can cause. So, in a country where Americans are twenty-five times more likely to die from gun violence than any other country in the world,<sup>32</sup> what is the answer and where should we turn? Professor Jeff Swanson, of Duke University School of Medicine believes the answer is not the hope that guns will go away (because they simply will not), but that "progress is going to be measured incrementally."<sup>33</sup> Professor Swanson sheds the political view of the Second Amendment argument and shifts his focus to the public health concerns that come with gun violence. As such, Professor Swanson and Dr. Liza Gold, a clinical professor of psychiatry at Georgetown University School of Medicine proffer a six-step approach to reduce the growing gun violence problem.<sup>34</sup> Both Swanson and Gold began by comparing the purchase of a gun to the purchase of a car. The United States has seen a steady decline of automobile deaths over the past fifty years due to increased awareness of the automobile industry with safer cars, better seatbelts, and fewer teenage driving

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<sup>30</sup> See *American's gun culture in 10 charts*, *supra* note 21.

<sup>31</sup> See *id.*

<sup>32</sup> Sean Gregory and Chris Wilson, *6 Real Ways We Can Reduce Gun Violence in America*, TIME (March 22, 2018), <http://time.com/5209901/gun-violence-america-reduction/>.

<sup>33</sup> *Id.*

<sup>34</sup> See generally *id.*

related accidents.<sup>35</sup> Swan and Gold believe that making the ownership requirements of a firearm more rigorous is the first step in lowering the mortality rates that accompany firearms. In many instances, owning a firearm is easier to obtain than it is to get a driver's license. As an initial step, Swan and Gold propose that "every buyer, of any legal age, to obtain a firearm license must include a registration of all purchases and a training program."<sup>36</sup>

The second step suggested by Swan and Gold is to create equal laws. As previously stated, the sub-machine and automatic rifles that make the headline news are the guns held responsible for the violent attacks and the focus of gun policy in the political arena. However, these types of guns are responsible for only five percent of all gun violence.<sup>37</sup> The real spike in the data is the correlation between a citizen's right to carry in some states and firearm crime. Nearly ten years after right to carry laws have been passed, there has been a thirteen to fifteen percent spike in gun violence.<sup>38</sup> The third and critical step avoided by most is the role of doctors. Doctors can act as a proactive step in gun safety. In Florida, a physician sued when his medical license was suspended, and he was fined for discussing his patients firearm safety within the family. The federal court finding that physicians had the right to ask the questions about firearms in the home, and to in fact stress the importance of firearm safety, overturned the case and found for the physician.<sup>39</sup> However, instances like the one in *Wollschlaeger v. Governor* make actively seeking for professionals speak about gun laws difficult. However, there is a correlation between education and nonviolence. If, at an earlier age, children are educated, like anything in life they can learn and adapt more quickly.

The fourth step by Gold and Swanson attacks the technological aspect of gun ownership.<sup>40</sup> In the United States today, a cell phone is capable of recording, listening, and carrying out or goals. Even though guns themselves may have advanced in the type of warfare they can create, safe keeping for them has had little to no evolution.

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<sup>35</sup> See *id.*

<sup>36</sup> *Id.*

<sup>37</sup> See *id.*

<sup>38</sup> *Id.*

<sup>39</sup> See *Wollschlaeger v. Governor*, 848 F.3d 1293 (11th Cir. 2017).

<sup>40</sup> See Sean Gregory and Chris Wilson, *6 Real Ways We Can Reduce Gun Violence in America*, TIME (March 22, 2018), <http://time.com/5209901/gun-violence-america-reduction/>.

With suicide rates soaring, surely the safe keeping of gun laws must be a factor when looking to protect the lives of many. The fifth step is to eliminate the restrictions that allow gun violence research. The theory is that to understand the effects of gun violence it is comparable to medicine in that funding and research are necessary. If researches can truly divulge themselves into what causes these attacks, they can begin to solve the problem. The sixth and final step provided by Gold and Swanson is to end the immunity for gun manufactures. The Protection of Lawful Commerce in Arms Act “shields gun manufacturers and sellers from civil claims brought by victims of gun violence.”<sup>41</sup> The theory behind this Act is manufactures, knowing they may be liable in a civil suit to the victim’s family, would try harder to make guns safer and push for more strict gun policy.

Apart from *Wolschlaeger v. Governor*, there is little to no effort in the United States when it comes to gun education. Students in grade level and high school classes are not taught the safety of firearms but are only shown the destruction that they cause. When looking at the Second Amendment to the United States Constitution intent is key. When the Framers drafted the Constitution, muskets were the weapon used to wage war and that certainly is not the case today. There is a spike in the purchase of semi-automatic weapons, handguns, and sub-machine guns certainly weapons the Framers could not have even dreamt of. Perhaps a view of the Swiss model will better show changes that may help the young generation of the United States grow, learn, and respect gun laws and policy. Although a very different country in its own right, the Swiss model has seen positive results when it comes to gun violence, gun crime, as well as an educated youth who are actively involved at an early age in gun handling.

### THE SWISS GUN MODEL

In a country where almost everyone privately owns a gun, “Switzerland has not seen a mass shooting since 2001.”<sup>42</sup> However, the NRA uses Switzerland to argue that more control is not the

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<sup>41</sup> *Id.*

<sup>42</sup> Hilary Brueck, *Switzerland has a stunningly high rate of gun ownership – here’s why it doesn’t have mass shootings*, BUS. INSIDER, (December 11, 2018, 3:49 PM), <https://www.businessinsider.com/switzerland-gun-laws-rates-of-gun-deaths-2018-2>.

answer that America needs.<sup>43</sup> At this point, you may be asking yourself, why and how is it that a country where so many own guns is there little to no gun violence. This section of the note will explore the options that the Swiss government uses to keep peace in a country that seems to have a similar deep appreciation of bearing arms.

Switzerland did not adopt its first federal regulations on firearms until 1999, and until that time, the local cantonal police determined the rules on firearms and who could own them.<sup>44</sup> Now however, the Weapons Act bans a number of different types of firearms throughout the country, and also determines which firearms are permitted as long as the proper permits are obtained.<sup>45</sup> In Switzerland, gun control is influenced by service members who have the ability to later purchase the weapons in addition to those interested in the purchase of a firearm. In Switzerland, the gun control policy is formulated around the handling of firearms by those who served in the Swiss armed forces who then have the ability to purchase the service weapon in addition to the society members interested in the purchase of a firearm. However, in 2010 the Weapons Act would have to be amended due to “several incidents in which militiamen killed themselves or others with the issued weapons.”<sup>46</sup>

The first, and quite possibly the best approach that Switzerland maintains regarding gun policy is to get the youth involved. Dating back to the 1600s Switzerland hosts a traditional shooting competition called Zurich’s Knabenschiessen.<sup>47</sup> This title translates to the words “boys shooting.”<sup>48</sup> However, starting in 1991, girls began to be allowed to be participants in the competition.<sup>49</sup> From an early age in Switzerland, children take pride in using the rifles that are used for shooting in the competition. Having children exposed at an early age on how to appreciate and use firearms may be why many Swiss see owning a gun as part of their “patriotic

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<sup>43</sup> *Id.*

<sup>44</sup> *See id.* at 35-36.

<sup>45</sup> Veronica DeVore, *Regulating firearms in gun-loving Switzerland*, SWISSINFO.CH (October 5, 2017, 1:30 PM), [https://www.swissinfo.ch/eng/society/bearing-arms\\_how-gun-loving-switzerland-regulates-its-firearms/43573832](https://www.swissinfo.ch/eng/society/bearing-arms_how-gun-loving-switzerland-regulates-its-firearms/43573832).

<sup>46</sup> *Id.*

<sup>47</sup> *See* Brueck, *supra* note 42.

<sup>48</sup> *Id.*

<sup>49</sup> *See id.*

duty to protect their homeland.”<sup>50</sup> This patriotic duty embedded in the Swiss is analogous to many American’s believing it is their constitutional duty to bear arms given by the Second Amendment. However, the Swiss take a teach first shoot later approach with their youth which may work to their benefit something that the United States has yet to implement.

In addition to their annual shooting competition for both boys and girls, Switzerland also has mandatory military service for men.<sup>51</sup> Comparable to the draft the United States once had, men in Switzerland from the ages of 18 and 34 go through a series of training requirements so they can be deemed “fit for service.”<sup>52</sup> If the men finish the training and achieve this honor, they are then given a pistol or rifle and are trained in the art of combat.<sup>53</sup> Unique to Switzerland though and after the men have completed their service, service members have the option to purchase their weapons but are required to get a permit to keep them in their homes.<sup>54</sup> If the militiaman would like to keep his service weapon in his home, it will only be permitted if it meets the conditions set forth by the qualified technicians of the military. This seems to be the Swiss government taking a hands-on approach to their service members. The Swiss government wants the weapons of those who choose to keep their service weapons to be in the proper condition after service so that the country remains safe for everyone. The interesting portion of this statistic is that about half of the guns owned by private citizens are those of the men who chose to buy their old service rifles. In fact, about one out of every four people in Switzerland are said to have a gun, regardless of whether they are service members.

In a huge difference from the American approach to firearms, the Swiss gun model allows licensure mostly of handguns only. In contrast to the United States where you can buy semiautomatic weapons, in Switzerland long arm semiautomatic weapons used for recreational hunting are exempt from the licensing requirement and fully automatic guns are banned. Switzerland is extremely strict and protective regarding allowing citizens to buy firearms if they have prior convictions or have a history of drug or alcohol

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<sup>50</sup> *Id.*

<sup>51</sup> *See id.*

<sup>52</sup> *Id.*

<sup>53</sup> *Id.*

<sup>54</sup> *See id.*

abuse.<sup>55</sup> The requirements for those attempting to buy firearm in Switzerland are as follows: you “must be at least eighteen years of age, (if not a service member), have not been placed under guardianship, may not give cause for suspicion that he would endanger himself or others, and may not have criminal record with a violent crime, or several nonviolent crime convictions.”<sup>56</sup> In fact, if you have been convicted of a crime or have had any type of drug or alcohol abuse problem you will not be able to purchase a gun. In addition, Switzerland looks to the attitude of those who wish to purchase a firearm. Character evidence, which is learned in law school, is explained that if the person has a propensity to be violent or dangerous in certain circumstances that evidence will not be admitted due to prejudicial reasons, in Switzerland, however, buying a gun will not be permitted if a person has a propensity for violence.

Additionally in Switzerland, if you would like to purchase a firearm because you believe you need to protect yourself, your family, or your business, then, you would apply to purchase a weapon for “defensive purposes.”<sup>57</sup> Under these circumstances, the firearm purchaser must prove they can properly handle a gun from loading, unloading, and shooting. After passing the physical handling test of the firearm, those that want the weapon for defensive purposes must pass a “theoretical exam.”<sup>58</sup> The Swiss theoretical exam for defensive purposes tests the knowledge of the following areas: (1) criminal provisions relating to violent crimes, self-defense, and justification, (2) federal as well as cantonal weapons law, (3) the different types of weapons along with the ammunition used, and (4) the proper security and conduct while carrying the weapon.<sup>59</sup> The Swiss believe that knowing the law combined with knowing every aspect of the weapon you own, will lead to less gun abuse and violence something that the United States needs.

Even though it seems the Swiss model may contain all the answers, they have their fair share of problems. Switzerland had the highest rate of suicides by firearms than any other European

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<sup>55</sup> Brueck, *supra* note 42.

<sup>56</sup> DeVore, *supra* note 45.

<sup>57</sup> Brueck, *supra* note 42.

<sup>58</sup> DeVore, *supra* note 45.

<sup>59</sup> *Id.*

country.<sup>60</sup> As cited earlier in this article, militiamen are able to purchase their firearm after their service time has ended. However, it is these same firearms that are responsible for about forty (40%) percent of the firearm assisted suicides in Switzerland.<sup>61</sup> Switzerland and the United States share the unfortunate statistic of suicide by firearm being the preferred method of suicide.<sup>62</sup>

The biggest and most controversial difference between the United States' gun policy and Switzerland's is in the United States anyone over eighteen years of age has the ability to walk into a gun store, browse the ever growing selection of semi-automatic and automatic weapons, select the one they would like, pass a simple background check and in a few days become the owner of an extremely powerful weapon used for whatever purpose they would like. Switzerland, not seeing the logic in the United States' approach, has passed extensive gun legislation throughout their country "banning all automatic weapons for civilians."<sup>63</sup> The first thing the United States could learn from the Swiss model is that the need for the semi-automatic machine guns proves useless for the everyday civilian in the United States. In Switzerland, even when hunting for sport, the rifles that are used are subjected to intense regulation. The Swiss model of gun control sees no need for their citizens to have the power and ability to harness the immense power that comes with yielding these types of powerful firearms. Switzerland also regulates the way citizens firearms are stored, and how the accompanying ammunition is sold. In a direct correlation to domestic violence and the protection of minors, Switzerland requires that "guns and their ammunition . . . must be stored separately and securely."<sup>64</sup> This separation of firearms from ammunition has resulted in a lower percentage of gun-related

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<sup>60</sup> Thoeni Nina et al., *Suicide by Firearm in Switzerland: Who Uses the Army Weapon? Results from the national survey between 2000 and 2010*, (Sept. 32, 2018), <https://smw.ch/en/article/doi/smw.2018.14646/>.

<sup>61</sup> See *id.* (citing to A. Frei et al., *Use of army weapons and private firearms for suicide and homicide in the region of Basel, Switzerland*, 27 J. OF CRISIS INTERVENTION & SUICIDE PREVENTION 140, 140-146 (2006)).

<sup>62</sup> See *id.* (citing to E. Michael Lewiecki and Sara A. Miller, *Suicide, Guns, and Public Policy*, 103 AM. J. PUB. HEALTH 27, 27 (2013); Swiss Federal Statistical Office, *Suizidimethoden, nach Altersgruppen und Geschlecht* (2016) [in German].

<sup>63</sup> Erin Zimmerman, *What Can the Swiss Teach the US about Guns?* SWISS INFO (Feb. 23, 2018), [https://www.swissinfo.ch/eng/florida-school-shooting\\_what-can-the-swiss-teach-the-us-about-guns-/43923350](https://www.swissinfo.ch/eng/florida-school-shooting_what-can-the-swiss-teach-the-us-about-guns-/43923350).

<sup>64</sup> *Id.*

deaths. It is taking more time than many Americans would like, but the United States has slowly begun to implement policies such as this and can see gun-assisted suicide statistics begin to drop.

Another important difference to note between the two countries is the mindset of the citizens to the government when it comes to gun policy in general. Two-thirds of citizens in the United States that participate in gun ownership state “personal protection as their primary reason for obtaining a firearm.”<sup>65</sup> These same two-thirds of people believe that there is not a gun problem in the United States. Incidental to this view, these two-thirds of American people believe their gun ownership is embedded in the Constitution, and therefore, their total and complete right to own a gun. The Swiss however look at their gun policy as a “patriotic duty”<sup>66</sup> and a means of protecting their country if and when they are called upon to defend it. The Swiss model also allows the government to confiscate the firearm if it is mishandled, abused, or if the government determines that someone’s ownership of that weapon is a threat.<sup>67</sup>

As noted earlier, mass shootings, sadly, are becoming a trend in the United States from Sandy Hook Elementary to Marjory Stoneman Douglas the United States has seen its fair share of horrific firearm related tragedies. The United States Constitution is seen by some, as a gift and a curse. Allowing the people the right to bear arms gives them a sense of protection, but no line has ever been drawn on where that protection ends. As mentioned above, the Swiss government frequently intervenes on those citizens who are believed to be a threat when owning a firearm. In fact, authorities in Switzerland have a list of 2,000 individuals all of whom are suspected of being able to carry out a mass shooting.<sup>68</sup> Much more invasive than the United States government, these flagged citizens in Switzerland are approached by the Swiss authorities accompanied by psychologists and are forced to relinquish their weapons, and unable to purchase new ones.<sup>69</sup>

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<sup>65</sup> *Id.*

<sup>66</sup> *Id.*

<sup>67</sup> *See id.*

<sup>68</sup> *See Krishnadev Calamur, The Swiss Have Liberal Gun Law, Too but They Also Have Fewer Gun-Related Deaths than the U.S., THE ATLANTIC* (Feb. 16, 2018), <https://www.theatlantic.com/international/archive/2018/02/swiss-guns/553448/>.

<sup>69</sup> *See id.*



American citizens fear this approach, protesting that too much government control goes against the rights that are granted to them in the Constitution and would only fear the government coming into their home with a psychologist taking what they believe is theirs and barring them from purchasing any type of weapon in the future. This is the "Big Brother" type invasion that leads people to distrust the government only fueling their desire to arm themselves more.

The government's role in Switzerland clearly rings throughout the entire country when it comes to their gun policy. Having the ability to monitor their citizens allows them to detect early and often who may or may not be a threat leading to a lower abuse of firearms. The citizens of Switzerland have learned to trust their government, giving them a sense of owning a gun for national freedom whereas the citizens of the United States appear to own guns for their distrust of the government; therefore, owning a gun for personal freedom.<sup>70</sup> It is clear, that even without a constitutional right to bears arms, Switzerland's citizens love their firearms much like the United States citizens. Switzerland, with the third-highest rate of gun ownership in the world behind the United States and Yemen, may have adopted a model of gun control that allows people to feel secure with owning a firearm, yet those who choose not possess a firearm are not worried about gun violence.<sup>71</sup> The Swiss model and the positive results that have stemmed from directly correlated with the tradition of training the youth at an early age about the culture of the "need to protect Switzerland from invaders"<sup>72</sup> instead of trying to overthrow the government. This generation to generation approach is what grounds the Swiss model and can be attributed to their successful gun policy.

#### WHAT CAN THE UNITED STATES TAKE AWAY FROM THE SWISS MODEL

It cannot be overstated that these two countries are very different from geographic size, population, historic backgrounds, and the setup of their governments. However, the Swiss government has embraced a policy which allows regulation of their

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<sup>70</sup> See Zimmerman, *supra* note 66.

<sup>71</sup> See Calamur, *supra* note 71.

<sup>72</sup> *Id.*

citizens when it comes to firearms in a way that the United States must take note of. The United States provides each of its citizens a Constitutional right to bear arms, but this right is rapidly killing our youth, and dividing the country right down the middle. Unlike the Swiss model however, I do not believe that more government control such as allowing the federal or state government to come into your home accompanied by a doctor to take away a firearm because that person is on a list is the path that the United States should adopt. This could lead to a dangerous leap in racial profiling and too much government intervention.

In my view, the initial step that the United States needs to adopt from the Swiss model is to educate the youth and seek to actively involve them when it comes to firearms. The Swiss model, at an early age, educates both boys and girls about the importance of a weapon. Further, they are trained in the art of shooting for sport giving them a learned respect for firearms. Although the United States is too large to train the entire country in shooting for sport, the U.S. could implement a nation-wide program on the handling, safe-keeping, and risks that come along with a firearm. In my view, education is the best tool to promote gun policy from something that is argued about to something that is understood at an early age leading to a safer country for future generations.

The next and quite possibly most important adaptation the United States could adopt from the Swiss gun policy is their ban on automatic weapons. It should come as no surprise that most Americans love their guns, and while not all firearms are used for destruction all firearms are certainly not created equal. The United States has seen destruction throughout its history, and this is a direct correlation of anyone, including teenagers, being able to purchase military-style rifles. "Americans have to be 21 before they can legally buy alcohol but . . . in most states, they can buy an AR-15 military-style rifle starting at age 18."<sup>73</sup> The Swiss gun model has made one thing extremely clear: handguns and rifles are used for service or sport and nothing else. Switzerland was wise to ban any type of assault-style weapon and the United States should look to do the same. However, the federal government seems to be shooting themselves in the foot. "Federal law has stricter age

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<sup>73</sup> Lois Beckett, *Most Americans Can Buy an AR-15 Rifle Before They Can Buy Beer*, THE GUARDIAN (Friday Feb. 16, 2018), <https://www.theguardian.com/us-news/2018/feb/16/americans-age-to-buy-ar15-assault-rifle-mass-shootings>.

requirements for buying handguns than for the military-style rifles that have become the weapon of choice for mass shootings.”<sup>74</sup> The problem in the United States regarding these “long guns” including hunting rifles, shotguns, and the military-style guns or assault weapons, is that they can be purchased at a lower age than handguns, typically only needing to be eighteen years old.<sup>75</sup> The United States views these “long guns” as a way for Americans to participate in sport, thus allowing children to access these weapons early on. Unlike the Swiss model, however, American youths lack the education that should accompany these weapons. That fact alone coupled with the fact that a teenager, only eighteen years of age, can walk into a gun store, pass a background check, and buy a military-styled weapon is not only shocking, it is dangerous.

Many view the reason for the age difference for an assault rifle and a handgun as a reason for the federal government to control everyday crime. The view of those who like the age limit as is, point to the statistic that those who kill on the street are not using these assault rifles. Promoters of this view believe that the handgun is responsible for tearing apart our country.<sup>76</sup> “Between 2010 and 2014, only 3.55 percent of gun murders were carried out with any kind of rifle,”<sup>77</sup> which is good news for any NRA supporter. However, Nikolas Cruz at only nineteen years old brutally murdered seventeen people at Marjory Stoneman Douglas high school and his weapon of choice, an AR-15 assault rifle.<sup>78</sup> When comparing the United States policy on “long guns” to that of Switzerland, the rationalization seems clear, do not allow citizens to arm themselves with weapons used for a military purpose and the country will avoid horrific events like the one Nikolas Cruz undertook.

The final and perhaps most difficult lesson the United States can learn from Switzerland is the mindset that accompanies the Swiss citizens when it comes to the government and their gun policy. To most Americans, “the gun represents the heart of their

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<sup>74</sup> *Id.*

<sup>75</sup> *See id.*

<sup>76</sup> *See id.*

<sup>77</sup> *Id.*

<sup>78</sup> *See id.*

nation's foundation and identity, a symbol of their freedom."<sup>79</sup> The American mindset regarding gun policy has been set since the American Revolution of 1776, when the militias fought back against the British for their independence.<sup>80</sup> After successfully forming a new nation, the Founding Fathers' motto for the new world was "the Constitution in one hand and a rifle in the other."<sup>81</sup> However, Americans need to learn what the Swiss have clearly figured out, which is the approach the United States was founded on cannot hold true in today's society. The United States needs to take note that guns should only belong with those entrusted to protect the country or local law enforcement, and that other than for sport, everyday citizens should not be entitled to the same firepower as those serving our country.

### CONCLUSION

"A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed"<sup>82</sup> is the policy as it relates to firearms in the United States. However, since the inception of the Second Amendment, times have changed. The United States has done little since the inception of the Second Amended to the United States Constitution to address the ever-growing dangers that come along with this constitutional right and as a result, the country is in a civil war. The lack of education regarding these deadly firearms has led to death and destruction, which are problems that this country cannot seem to solve. However, if the United States looked to Switzerland it would begin to find the answers needed to truly make America great again.

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<sup>79</sup> Tyger Drew-Honey, *Why are Americans So Obsessed with Guns?*, BBC <https://web.archive.org/web/20151209171643/http://www.bbc.co.uk/guides/z3t2hv4> (original webpage unavailable).

<sup>80</sup> *See id.*

<sup>81</sup> *Id.*

<sup>82</sup> U.S. CONST. amend. II.